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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,982	03/01/2002	Kevin McCarthy	042933/302169	2223
826	7590	10/11/2006	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			HARBECK, TIMOTHY M	
		ART UNIT	PAPER NUMBER	
			3692	

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/084,982	MCCARTHY, KEVIN
	Examiner	Art Unit
	Timothy M. Harbeck	3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 March 2002.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-13 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No: _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/17/2003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims recite a wireless terminal, however there is structure recited, in the body of the claims, which describes what this terminal is comprised of. It appears that these claims are directed toward software.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 10-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Software, programming, instructions or code not claimed as encoded on computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in a computer. When such descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases.

Art Unit: 3628

Furthermore, software, programming, instructions or code not claimed as being computer executable are not statutory because they are not capable of causing functional change in a computer. In contrast, when a claimed computer-readable medium encoded with a computer program defines structural and functional interrelationships between the computer and the program, and the computer is capable of executing the program, allowing the program's functionality to be realized, the program will be statutory.

Claims 10-13 are therefore rejected where there is no indication that the proposed software is recorded on computer-readable medium and/or capable of execution by a computer. Examiner suggests that the applicant incorporate into Claims 10-13 language that the proposed software is recorded on computer-readable medium and capable of execution by a computer to overcome this rejection.

Correction required. See MPEP § 2106 [R-2].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiser et al (hereinafter Wiser, US 6,868,403 B1) in view of Olrik (US 2004/0092266 A1).

Re Claim 1: Wiser discloses a method of handling payment of downloadable content from a content provider to a terminal via a communication network said method comprises the steps of:

- Opening a software application in said terminal (FIG 1; Client System "Web Browser.")
- Requesting downloadable content from the open software application (Column 16, lines 30-39)
- Automatically starting up a network session (Column 16, lines 36-42)
- Transmitting in said network session a request for downloading said downloadable content for the software application (Column 16, lines 42-47),
- Receiving said downloadable content for the software application for pre-study (Column 2, lines 13-21)
- Handling of payment for said downloadable content for the software application for enabling storing of said downloadable content for the software application (Column 16, lines 48-64), and
- Storing of said downloadable content for the software application from which the downloadable content for the software application was requested (Column 10, lines 2-17)

Wiser does not explicitly disclose wherein the terminal is a wireless terminal.

Olrirk discloses a mobile telecommunications data service wherein a wireless terminal (mobile telephone) to be used as web browsers (0002), which are further utilized in

downloading content (0057-0067). It would have been obvious to a person of ordinary skill in the art at the time of invention to include the teachings of Olrik to the disclosure of Wiser in order to use a wireless application protocol to provide data from a remote server to a mobile station.

Re Claim 2: Wiser in view of Olrik discloses the claimed method supra and Wiser further discloses wherein the requested downloadable content includes at least a graphic icon (Column 2, line 15 "graphics.").

Re Claim 3: Wiser in view of Olrik discloses the claimed method supra and Olrik further discloses wherein the networks session is a WAP session (Abstract)

Re Claim 4: Wiser in view of Olrik discloses the claimed method supra and Wiser discloses wherein the WAP session is established with a pre-identified content provider (Column 6, lines 17-38; FIG 1; Refs 128-122-112)

Re Claim 5: Wiser in view of Olrik discloses the claimed method supra and Wiser further discloses wherein the user of the wireless terminal has an account at the pre-identified content provider, and wherein the handling of payment for said downloadable content includes transfer of an amount from said account to the content provider upon approval by the user (Column 17 line 53-Column 18 line 6).

Re Claim 6: Wiser in view of Olrik discloses the claimed method supra and Wiser further discloses wherein the storing of said downloadable content is enabled once the user has approved said payment (Column 18, lines 7-20).

Re Claim 7: Wiser in view of Olrik discloses the claimed method supra and Wiser further discloses wherein the WAP session is established with a pre-identified

Internet portal hosting at least one content provider (Column 6, lines 17-38; FIG 1; Refs 128-122-112)

Re Claim 8: Wiser in view of Olrik discloses the claimed method supra and Wiser further discloses wherein the user of the wireless terminal has an account at the pre-identified Internet portal, and wherein the handling of payment for said downloadable content includes transfer of an amount from said account to the content provider upon approval by the user (Column 17 line 53-Column 18 line 6).

Re Claim 9: Wiser in view of Olrik discloses the claimed method supra and Wiser further discloses wherein the storing of said downloadable content is enabled once the user has approved said payment (Column 6, lines 40-42)

Re Claims 10-13: Further wireless terminal claims would have been obvious from the previously rejected method claims 1-4, respectively, and are therefore rejected using the same art and rationale.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Harbeck whose telephone number is 571-272-8123. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on 571-272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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